

## REMARKS

The present amendment is in response to the Office Action dated September 29, 2005. Claims 1-43 are now present in this case. Claims 1, 7, 10, 18, 23, and 29 are amended.

Formal drawings for the application were filed on April 11, 2005. The applicants respectfully request acknowledgement that the formal drawings were received and made of record in the case.

The applicants notes the Examiner's objection to claims 44-46 as not having been submitted. It should be noted that only 43 claims are present in this case. A typographical error in the previous amendment inadvertently listed 1-46 as present in the case. That should have been claims 1-43.

Claims 29, 33, 36, 38, 40 and 41 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description. The applicants respectfully traverse this rejection and request a reconsideration. The Office Action states that the specification fails to provide support for the term "data structure" and therefore considers it to be new matter. The specification describes a connection database 182 (see *e.g.*, Figure 1c) which stores information pertaining to QoS profiles in connection information of the varying servers. (See page 15, lines 18-19.) Thus, the specification provides an example implementation using a database. However, those skilled in the art could appreciate that other data storage forms, such as a memory array, spreadsheet, or data look-up table could be used to contain such records. A database is defined in the *Microsoft Computer Dictionary*, (5th ed.), as a "file composed of records." That same dictionary defines a data structure as "any organizational scheme, such as a record or array, that can be applied to data to facilitate interpreting the data or performing operations on it." Thus, a database is merely one implementation of a data structure and may be used in the system described in the pending application to store data pertaining to the QoS connections available at the various servers. One skilled in the art would recognize that a database is one example implementation of a data structure. However, those skilled in the art would also understand the use of a data structure in claims 29, 33, 36, 38, 40, and 41.

Accordingly, the applicants respectfully request withdrawal of the rejection of these claims under 35 U.S.C. § 112, first paragraph.

Claims 29, 33, 36, 38, 40, and 41 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. The Office Action states that it is unclear where the data structure is embodied. As discussed above, the database 168 (See Figure 1c) is but one example of a data structure. Therefore, it is believed that use of the term “data structure” is not indefinite but is a broader term for a storage element than the term database. Accordingly, the applicants respectfully request withdrawal of the rejection of claims 29, 33, 36, 38, 40, and 41 under 35 U.S.C. § 112, second paragraph.

Claims 29, 33, 36, 38, 40, and 41 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter for use of the term “data structure.” As discussed above, data structure is clearly defined in the *Microsoft Computer Dictionary* and it is a term well known to those of ordinary skill in the art. As further noted above, the database 168 described in the specification is but one example of the data structure. Other well known examples, such as a spreadsheet, data look-up table, or the like could also be used in place of the database 168. The term data structure, which is also clearly defined in the *Microsoft Computer Dictionary* and is well known to those of ordinary skill in the art, refers to a record or array that can be applied to data, such as a database, to facilitate interpreting the data or performing operations on it. Accordingly, it is believed that the term “data structure” refers to a physical element. One example of the data structure is the database 168. As such, data structure is clearly directed to statutory subject matter. Accordingly, the applicants respectfully request the withdrawal of the rejection of claims 29, 33, 36, 38, 40, and 41 under 35 U.S.C. § 101.

Claims 1, 10, 11, 18-26, 29-30, and 37-43 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,982,748 to Yin et al. The applicants respectfully traverse this rejection and request reconsideration. With respect to claims 1 and 10, the Office Action indicates that the claims do not clearly recite determining availability of multiple connections. The applicants have amended claims 1 and 10 in an effort to more clearly recite that availability of multiple connections are determined. As discussed in previous responses, Yin teaches directly away from such a concept and merely accepts a connection if the requested resources are available. There is no

teaching or suggestion that a method or apparatus include the concept of determining the availability of multiple different connections, as recited in claims 1 and 10.

Independent claims 18, 23, and 29 have also been amended to clarify that the method or data structure is configured to receive and store a connection response from the server indicating multiple service level capabilities of the server. Specifically, claim 18 is a method in which a received message contains "service indicator data indicative of multiple levels of service provided by the respective server." Claim 23 is a method claim in which a received response message contains "data indicative of multiple levels of service provided by the respective server machine." Finally, claim 29 is an apparatus claim which recites *inter alia* "a data structure configured to receive and store connection response from the server indicating multiple service level capabilities of the server." As noted above, Yin does not teach or suggest such capability. Yin only checks to determine if the requested service is available and, if so, makes the connection. There is no request for multiple service level capabilities in Yin and no response messages containing such data. Accordingly, independent claims 18, 23, and 29 are clearly allowable over Yin.

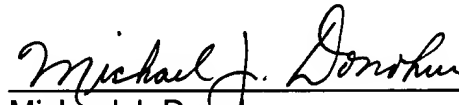
Dependent claims 2-6, 8, 9, 11-17, 19-22, 24-28, and 30-36 are rejected under 35 U.S.C. § 103(a) over Yin combined with one of several other previously cited references. However, the inapplicability of Yin has already been discussed above with respect to the independent claims. None of the combination of references suggest any structural elements or method that teaches or suggests the determination of multiple service connections or indicators of multiple levels of service provided by servers, as recited in each of the independent claims. In the interest of brevity, detailed arguments will not be presented with respect to each of the combinations of references. However, it should be noted that Yin, taken alone or in combination with any of the references cited in the Office Action, do not teach determining availability of PVC connections at the server and determining availability of SVC connections at the server, as recited in claim 1, or receiving a "connection response comprising available QoS levels," as recited in claim 7, or formulating "connection responses indicating multiple connection availability comprising PVC connection availability and SVC connection availability," as recited in claim 10, or receiving a message containing "service indicator data indicative

of multiple levels of the service provided by the respective server," as recited in claim 18, or receiving a response message containing "data indicative of multiple levels of service provided by the respective server machine," as recited in claim 23, or a data structure configured to "receive and store a connection response from the server indicating multiple service level capabilities of the server," as recited in claim 29. For these reasons, among others, independent claims and subsequent dependent claims are each allowable over the combination of references cited in the Office Action. Accordingly, all claims are now in condition for allowance.

In view of the above amendments and remarks, reconsideration of the subject application and its allowance are kindly requested. The applicants have made a good faith effort to place all claims in condition for allowance. If questions remain regarding the present application, the Examiner is invited to contact the undersigned at (206) 628-7640.

Respectfully submitted,

Davis Wright Tremaine LLP

A handwritten signature in cursive script, reading "Michael J. Donohue", is written over a horizontal line.

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